

§ 404.2103

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(l) Sections 404.2120 and 404.2121 describe the audits and the prepayment and postpayment validation reviews we will conduct.

(m) Section 404.2122 discusses confidentiality of information and records.

(n) Section 404.2123 provides for the applicability of other Federal laws and regulations.

(o) Section 404.2127 provides for the resolution of disputes.

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8454, Mar. 8, 1990; 59 FR 11912, Mar. 15, 1994; 62 FR 38452, July 18, 1997; 68 FR 40123, July 7, 2003]

§ 404.2103 Definitions.

For purposes of this subpart:

Accept the beneficiary as a client for VR services means that the State VR agency determines that the individual is eligible for VR services and places the individual into an active caseload status for development of an individualized written rehabilitation program.

Act means the Social Security Act, as amended.

Alternate participants means any public or private agencies (except participating State VR agencies (see § 404.2104)), organizations, institutions, or individuals with whom the Commissioner has entered into an agreement or contract to provide VR services.

Commissioner means the Commissioner of Social Security or the Commissioner's designee.

Disability means “disability” or “blindness” as defined in sections 216(i) and 223 of the Act.

Disability beneficiary means a disabled individual who is entitled to benefits under section 223, 202(d), 202(e) or 202(f) of the act or is continuing to receive payment under section 225(b) of the Act after his or her disabling physical or mental impairments have ceased.

Medical recovery for purposes of this subpart is established when a beneficiary's disability entitlement ceases for any medical reason (other than death). The determination of medical recovery is made by the Commissioner in deciding a beneficiary's continuing entitlement to benefits.

Place the beneficiary into an extended evaluation process means that the State VR agency determines that an extended evaluation of the individual's

VR potential is necessary to determine whether the individual is eligible for VR services and places the individual into an extended evaluation status.

SGA means substantial gainful activity performed by an individual as defined in §§ 404.1571 through 404.1575 or § 404.1584 of this subpart.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, or Guam. It includes the State VR agency.

Trust Funds means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

Vocational rehabilitation services has the meaning assigned to it under title I of the Rehabilitation Act of 1973.

VR agency means an agency of the State which has been designated by the State to provide vocational rehabilitation services under title I of the Rehabilitation Act of 1973.

Waiting period means a five consecutive calendar month period throughout which an individual must be under a disability and which must be served before disability benefits can be paid (see § 404.315(d)).

We, us and our refer to the Social Security Administration (SSA).

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8454, Mar. 8, 1990; 59 FR 11912, Mar. 15, 1994; 62 FR 38452, July 18, 1997; 68 FR 40123, July 7, 2003]

§ 404.2104 Participation by State VR agencies or alternate participants.

(a) *General*. In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended. An alternate participant must have a similar plan and otherwise qualify under § 404.2106.

(b) *Participation by States*. (1) The opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disability beneficiaries. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind disability beneficiaries in the State in accordance with paragraph (d) of this section. We would arrange for VR services for non-blind disability beneficiaries in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(2)(i) In order for the State to participate with respect to a disability beneficiary whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process. The notice must be re-

ceived by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the month in which we referred the beneficiary to the State VR agency. If we do not receive such notice with respect to a beneficiary whom we referred to the State VR agency, we may arrange for VR services for that beneficiary through an alternate participant.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the beneficiary into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the beneficiary as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the beneficiary as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such beneficiary. If we receive a notice of a decision by the State VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation, we may arrange for VR services for that beneficiary through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State, we will give the State the opportunity to participate with respect to such class(es) of disability beneficiaries by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may

choose not to participate through its VR agency(ies) with respect to any disability beneficiaries in the State, or it may choose to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2)(i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disability beneficiaries in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries, we may arrange for VR services through an alternate participant(s) for the class(es) of disability beneficiaries in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to re-

sume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disability beneficiary in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the beneficiary to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disability beneficiaries in that State:

(1) A disability beneficiary whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2)(i) of this section of a decision by the VR agency either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process;

(2) A disability beneficiary with respect to whom we receive a notice under paragraph (c)(2)(ii) of this section of a decision by the VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation;

(3) The class(es) of disability beneficiaries excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(4) All disability beneficiaries in the State if the State has decided not to participate through its VR agency(ies).

[59 FR 11912, Mar. 15, 1994]

§ 404.2106 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract